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FILED
02/28/2023
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Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0793-R-2022
Lambert, Kathryn
3.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Bassett J. Hoiness; Susan K. Hoiness

CASE 43B-0793-R-2022
43B 30115995

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claim 43B 30115995 appeared in the Preliminary Decree with the following issue remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. ACCORDING TO INFORMATION IN THE CLAIM FILE, IT APPEARS WATER FROM THE SOURCE WAS FIRST USED IN 1908.

This remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark. In this instance, a review of the Statement of Claim file shows there is not a sufficient basis for adding the issue remark. The issue remark should be removed without further proceedings.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

"If as a result of the examination or the prior verification conducted by the department an issue remark is attached to a claim, the resulting information in the issue remark and the issue remark must be weighted against the claimed water right." Section 85-2-247(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. This stockwater claim appeared in the Preliminary Decree with priority date December 31, 1886. The Statement of Claim does not specify a priority date but it does state that the type of right is a use right and includes the following statement: "Ranch house was built in 1886." (Emphasis added.) A copy of the patent for a portion of the claimed place of use is attached. It is dated October 22, 1908. This 1908 Patent for a portion of the claimed place of use is not sufficient to raise a question about an 1886 priority date for this stockwater right based on "Ranch house was built in 1886". The priority date should not be changed.

The issue remark concerning the priority date should be removed as addressed and resolved.

2. The following remark also appeared on the abstract for this claim:

THIS EXEMPT CLAIM WAS FILED ON 08/02/2017. THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43B DECREE ISSUED 1/16/1985.

This remark provides notice that the claim was not included in the Temporary Preliminary Decree. This remark does not raise an unresolved issue which needs to be addressed. There are no proceedings required for this remark. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information in the claim file is sufficient to address the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Bassett J. Hoiness
Susan K. Hoiness
544 Frontage Rd E
Livingston, MT 59047-9102

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 30115995 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: BASSETT J HOINESS
544 FRONTAGE RD E
LIVINGSTON, MT 59047 9102

SUSAN K HOINESS
544 FRONTAGE RD E
LIVINGSTON, MT 59047 9102

Priority Date: DECEMBER 31, 1886

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: PETERSON CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENE	20	2S	12E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		E2SE	20	2S	12E	PARK
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SENE	20	2S	12E	PARK
2			E2SE	20	2S	12E	PARK